

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 288 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DN BHATT,

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
Mr.Digant P. Joshi, AGP for M/s Patel Advocates.
RULE SERVED for Respondent No. 2, 5
MR HS MUNSHAW for Respondent No. 4

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 27/04/2000

ORAL JUDGEMENT :

This Court had issued rule on 21.1.2000. Notice
as to interim relief and hearing of rule were made
returnable on 25.2.2000.

2. On 25.2.2000, the Court passed an order, which reads as under:

"Heard the ld. advocates. In spite of the order dated 21.1.2000, the respondents have failed to submit the computation of the retiral benefits due and payable to the petitioner and the amount due to be recovered from the petitioner. It is however, orally submitted that a sum of Rs.86,000/- is recoverable from the petitioner. It is, therefore, directed that all the retiral benefits of the petitioner minus the aforesaid amount of Rs.86,000/- shall be paid to the petitioner within a period of ten days from today. The affidavit as directed on 21.1.2000 shall be placed on the record on or before the next date of hearing, failing which the officer concerned may be answerable for committing contempt of the Court. S.O. to 9.3.2000."

3. The respondents have then filed an affidavit sworn on 25.2.2000, followed by an additional affidavit dated 13.3.2000. Thereafter, on 15.3.2000, the Court asked the respondents to file an additional affidavit to clarify the calculation placed in affidavit at page 21 and also directed the respondents to show as to how against the audit para pertaining to year 1974- 75, any amount can be recovered after the petitioner having retired in 1990, without following the procedure prescribed under the law, if any. Pursuant to that an affidavit dated 18.3.2000 is filed, but as the same is not available on record, a xerox copy of affirmed affidavit is placed on record.

4. The controversy in this petition is in a narrow compass inasmuch as the petitioner's case is that the petitioner has retired on 31.5.1990 on superannuation having put in more than 35 years of service. It is the case of the petitioner that no departmental inquiry was initiated against the petitioner either prior to retirement or till date. The petitioner made number of representations to the authorities requesting to finalise his pension case, but no response was given. The petitioner having failed to get his grievance redressed at the hands of the authorities, is constrained to approach this Court by way of this writ petition.

5. A perusal of the affidavits which have been filed does not point out any justification on the part of the respondents to withhold the amount of Rs.86,000/-. It is shocking that at one stage it was agitated by respondent

no.2 that a sum of Rs.86,000/- was withheld by the department under the orders of the Court. I am afraid the respondents cannot be permitted to read the orders of this Court in this manner. However, now when the matter is taken up for final disposal, Mr.Digant P. Joshi, AGP is not able to point out any justification for withholding the aforesaid amount, Rs.86,000/-. Mr.Joshi was asked to show cause as to why this petition should not be allowed with costs and why interest should not be awarded to the petitioner for the delayed payment, as the legitimate dues payable to the petitioner were withheld by the authorities for no valid reasons. Mr.Joshi is not able to point out anything beyond the three affidavits filed on the record. As noted above, the affidavits do not render any explanation and do not show even an iota of authority under which this amount could have been withheld.

6. In fact, this Court while passing order on 25.2.2000 wanted to see that the petitioner is not left high and dry. Therefore, accepting the oral word of the learned counsel for the respondents, and assuming that the department is to recover the sum of Rs.86,000/-, the remaining amount was ordered to be paid to the petitioner. It was understood that a sizeable amount will then also be payable to the petitioner, but the department has paid a sum of Rs.977/- only, to the petitioner, on 3.3.2000 which shows that the authorities are not only careless in general but also even in the matters which are pending before the Court.

7. In the facts and circumstances, it is deemed fit that this petition be allowed; not only that it should be allowed with costs. The respondents shall be directed not only to make the payment of the amount which is withheld but the same shall be paid with interest. Mr.Upadhyay, learned counsel for the petitioners submitted that the Courts have entertained the requests of the petitioners for the interest at the rate of 18% and therefore, in this case also interest at the rate of 18% be awarded. The request of Mr.Upadhyay for interest @ 18% is not accepted. The respondents are directed to pay the amount withheld, with interest at the rate of 12% per annum from the date on which it ought to have been paid by the department, till the date the amount is actually paid to the petitioner. Rule is made absolute with cost of Rs.2,500/-- (Rs.two thousand and five hundred only). This amount shall be paid as early as possible, but not later than eight weeks from the date of receipt of this order.

8. With the above directions/ observations the petition is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(Ravi R. Tripathi, J.)

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